



STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 22738

PERMIT 15942

LICENSE 10500

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THIS IS TO CERTIFY, That Usibelli Coal Mines, Inc.
1900 Maxwell Canyon Road
St. Helena, CA 94574

Has the right to use waters of an Unnamed Stream in Napa County tributary to **Burton Creek** thence Maxwell Creek thence Pope Creek

for the following purposes: Irrigation, Frost Protection, Stockwatering, Recreational, Fire Protection

Amended License 10500 supersedes the license originally issued 08/01/1975, which was perfected in accordance with the laws of California, the regulations of the SWRCB or its predecessor, and the terms of Permit 15942. The priority of this right dates from 03/22/1967. Proof of maximum beneficial use of water pursuant to Application 22738 was made as of 07/03/1974 (the date of inspection).

The amount of water that may be used under this license is limited to the amount actually beneficially used for the stated purposes and shall not exceed **49 acre-feet per annum to be collected from October 1 of each year to May 1 of the succeeding year. The maximum withdrawal in any one year shall not exceed 49 acre-feet.**

Unless a change is approved by the State Water Resources Control Board (SWRCB), water used under this license may be diverted, rediverted, stored and used only as specified below;

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

At Upper Reservoir - North 34°32' East 8,136 feet from monument C-5 of Rancho Catacula, being within SW¼ of SE¼ of Projected Section 23, T9N, R5W, MDB&M

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

Recreational and fire protection uses at Upper Reservoir within SW¼ of SE¼ and NW¼ of SE¼ of Projected Section 23, T9N, R5W, MDB&M; stockwatering within SE¼ of SW¼ and at Upper Reservoir within SW¼ of SE¼ and NW¼ of SE¼ of Projected Section 23, T9N, R5W, MDB&M; and irrigation and frost protection of 357.7 acres within Projected Sections 23, 25 and 26, T9N, R5W, MDB&M as shown on map on file with the SWRCB.

The quantity of water diverted under this license is subject to modification by the State Water Resources Control Board if, after notice to the licensee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives can not be achieved solely through the control of waste discharges.

Licensee shall maintain an outlet pipe of adequate capacity in his/her dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this license may be released.

This license does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

Licensee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

(1) Licensee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this license for noncompliance with the terms of the Agreement.

(2) The Court has appointed a Watermaster to implement the provisions of the Agreement. The licensee shall be responsible for partial payment of the Watermaster costs in accordance with the terms of the Agreement.

(3) Licensee shall measure reservoir storage at the beginning and end of the Accumulation Season. Contribution to Annual Depletion shall be determined to be the change in storage during the Accumulation Season. The licensee shall pay for the cost of installing and maintaining any water level measuring device required by the SWRCB.

(4) Licensee shall install at licensee's own cost such additional or other measurement devices as are necessary to measure actual depletions, if the watermaster determines that additional measures are necessary, consistent with Section 3.A.3 (Measuring Devices) of the Agreement.

(5) Licensee shall report to the watermaster annually, on or about September 1, the amount of water diverted to storage under this license at the beginning and end of the Accumulation Season as required by the watermaster. Such annual reports shall be made in writing on forms approved by the watermaster.

(6) The watermaster shall have the right to enter property to inspect measuring equipment and to observe compliance with the terms and conditions of this license, upon 48-hour prior notice and upon such reasonable conditions as licensee may prescribe.

(7) Licensee is hereby put on notice that there may be years when diversion of water under this license will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this license.

(8) In the event Allowable Depletion is exceeded in any year, licensee shall release water diverted to storage to the extent necessary to bring the Allowable Depletion into compliance. Licensee's obligation to release water from storage shall be governed by the repayment provisions of the Agreement. (Agreement pp. 9, 10, and 11).

(9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (1) does not drop below 640,000 acre-feet in storage as of May 1, licensee shall have three years, starting in the next Accumulation Season, to make up or repay licensee's excess diversion (2) does not reach 640,000 acre-feet of storage as of May 1, licensee shall have one year, starting in the next Accumulation Season, to make up or repay licensee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, licensee shall be excused from any further obligation for repayment of the overage.

(10) Licensee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.

(11) Licensee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the license.

(12) Licensee is hereby put on notice of licensee's right, upon reasonable prior notice, to inspect and to copy, at licensee's own expense, all records and reports of the watermaster.

Inclusion in the license of certain provisions of this Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this license.

(0000024)

The State Water Resources Control Board (SWRCB) shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this license to delete, revise, amend, or adopt new terms or conditions to: (1) implement the March 10, 1995, Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the SWRCB provides notice to affected parties and provides an opportunity for a hearing.

(0000012)

Licensee shall allow representatives of the Board and other parties, as may be authorized from time to time by the Board, reasonable access to project works to determine compliance with the terms of this license.

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the SWRCB.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the SWRCB.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

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PERMIT 15942

LICENSE 10500

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: SEP 5 2000

STATE WATER RESOURCES CONTROL SWRCB



Harry M. Schueller
Chief, Division of Water Rights

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
ORDER

Application 22738 Permit 15942 License 10500

**ORDER AMENDING LICENSE
BY ADDITION OF TERMS AND CONDITIONS
TO CONFORM WITH ORDER WR 96-002**

WHEREAS:

1. License 10500 was issued to Usibelli Coal Mines, Inc. on August 1, 1975 and recorded with the County Recorder of Napa County in Volume 969, Page 476 on August 5, 1975.
2. Licensee is signatory to the March 10, 1995 Condition 12 Settlement Agreement (Agreement) between U.S. Bureau of Reclamation, Solano County Water Agency, and nearly all post-1945 appropriate water right holders in the Putah Creek watershed above Monticello Dam.
3. Order WR 96-002 was adopted by the State Water Resources Control Board on February 27, 1996.
4. Both the Agreement and the Order subject the license to the following conditions.

NOW, THEREFORE, IT IS ORDERED THAT THE FOLLOWING CONDITIONS BE ADDED TO THE LICENSE:

Licensee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

- (1) Licensee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this license for noncompliance with the terms of the Agreement.
- (2) Diversion of water under this license shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The licensee shall be responsible for partial payment of the Watermaster costs in accordance with the terms of the Agreement.
- (3) Licensee shall measure reservoir storage at the beginning and end of the Accumulation Season. Contribution to Annual Depletion shall be determined to be the change in storage during the Accumulation Season. The licensee shall pay for the cost of installing and maintaining any water level measuring device required by the SWRCB.

Raymond Walsh, Chief
Division of Water Rights



STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

License for Diversion and Use of Water

APPLICATION 22738

PERMIT 15942

LICENSE 10500

THIS IS TO CERTIFY, That

HAVE made proof as of JULY 3, 1974 (the date of inspection)
to the satisfaction of the State Water Resources Control Board of a right to the use of the water of
AN UNNAMED STREAM IN NAPA COUNTY
tributary to BURTON CREEK THENCE MAXWELL CREEK THENCE POPE CREEK

for the purpose of IRRIGATION, STOCKWATERING, RECREATIONAL AND FIRE PROTECTION USES
under Permit 15942 of the Board and that the right to the use of this water has been perfected
in accordance with the laws of California, the Regulations of the Board and the permit terms; that the
priority of this right dates from MARCH 22, 1967 and that the amount of water to which
this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated
purposes and shall not exceed FORTY-NINE (49) ACRE-FEET PER ANNUM, TO BE COLLECTED FROM
OCTOBER 1 OF EACH YEAR TO MAY 1 OF THE SUCCEEDING YEAR. THE MAXIMUM WITHDRAWAL
IN ANY ONE YEAR SHALL NOT EXCEED 49 ACRE-FEET.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

AT UPPER RESERVOIR - NORTH 34°32' EAST 8,136 FEET FROM MONUMENT C-5 OF CATACULA
RANCHO, BEING WITHIN SW1/4 OF SE1/4 OF PROJECTED SECTION 23, T9N, R5W, MDB&M.

A DESCRIPTION OF LANDS OR THE PLACE WHERE
SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

RECREATIONAL AND FIRE PROTECTION USES AT UPPER RESERVOIR WITHIN SW1/4 OF SE1/4 AND
NW1/4 OF SE1/4 OF PROJECTED SECTION 23, T9N, R5W, MDB&M; STOCKWATERING WITHIN SE1/4
OF SW1/4 AND AT UPPER RESERVOIR WITHIN SW1/4 OF SE1/4 AND NW1/4 OF SE1/4 OF PROJECTED
SECTION 23, T9N, R5W, MDB&M; AND IRRIGATION OF 87 ACRES AS FOLLOWS:

- 1 ACRE WITHIN NE1/4 OF SW1/4 OF PROJECTED SECTION 23, T9N, R5W, MDB&M
- 2 ACRES WITHIN SW1/4 OF SW1/4 OF PROJECTED SECTION 23, T9N, R5W, MDB&M
- 34 ACRES WITHIN SE1/4 OF SW1/4 OF PROJECTED SECTION 23, T9N, R5W, MDB&M
- 18 ACRES WITHIN SW1/4 OF SE1/4 OF PROJECTED SECTION 23, T9N, R5W, MDB&M
- 15 ACRES WITHIN NE1/4 OF NW1/4 OF PROJECTED SECTION 26, T9N, R5W, MDB&M
- 17 ACRES WITHIN NW1/4 OF NE1/4 OF PROJECTED SECTION 26, T9N, R5W, MDB&M

THE QUANTITY OF WATER DIVERTED UNDER THIS LICENSE IS SUBJECT TO MODIFICATION
BY THE STATE WATER RESOURCES CONTROL BOARD, IF, AFTER NOTICE TO THE LICENSEE AND
AN OPPORTUNITY FOR HEARING, THE BOARD FINDS THAT SUCH MODIFICATION IS NECESSARY
TO MEET WATER QUALITY OBJECTIVES IN WATER QUALITY CONTROL PLANS WHICH HAVE BEEN
OR HEREAFTER MAY BE ESTABLISHED OR MODIFIED PURSUANT TO DIVISION 7 OF THE WATER
CODE. NO ACTION WILL BE TAKEN PURSUANT TO THIS PARAGRAPH UNLESS THE BOARD FINDS
THAT (1) ADEQUATE WASTE DISCHARGE REQUIREMENTS HAVE BEEN PRESCRIBED AND ARE IN
EFFECT WITH RESPECT TO ALL WASTE DISCHARGES WHICH HAVE ANY SUBSTANTIAL EFFECT
UPON WATER QUALITY IN THE AREA INVOLVED, AND (2) THE WATER QUALITY OBJECTIVES
CANNOT BE ACHIEVED SOLELY THROUGH THE CONTROL OF WASTE DISCHARGES.

LICENSEE SHALL MAINTAIN AN OUTLET PIPE OF ADEQUATE CAPACITY IN HIS DAM AS PRACTICABLE TO THE BOTTOM OF THE NATURAL STREAM CHANNEL, OR PROVIDE OTHER MEASURES SATISFACTORY TO THE STATE WATER RESOURCES CONTROL BOARD, IN ORDER THAT WATER ENTERING THE RESERVOIR OR COLLECTED IN THE RESERVOIR DURING AND AFTER THE CURRENT STORAGE SEASON MAY BE RELEASED INTO THE DOWNSTREAM CHANNEL TO THE EXTENT NECESSARY TO SATISFY DOWNSTREAM PRIOR RIGHTS.

LICENSEE IS HEREBY PUT ON NOTICE THAT THERE MAY BE YEARS WHEN WATER COLLECTED TO STORAGE UNDER THIS LICENSE WILL NOT BE WITHIN THE RESERVATION OF WATER ESTABLISHED FOR THE WATERSHED UPSTREAM FROM MONTICELLO RESERVOIR IN DECISION D-869. DURING SUCH YEARS, UNLESS REPLACEMENT WATER IS PROVIDED ON AN EXCHANGE BASIS, LICENSEE SHALL RELEASE WATER COLLECTED TO STORAGE UNDER THIS LICENSE DURING THE PRECEDING COLLECTION SEASON AT THE MAXIMUM PRACTICABLE RATE TO FLOW INTO MONTICELLO RESERVOIR.

THIS LICENSE DOES NOT AUTHORIZE COLLECTION OF WATER TO STORAGE OUTSIDE OF THE SPECIFIED SEASON TO OFFSET EVAPORATION AND SEEPAGE OR FOR ANY OTHER PURPOSE.

Licensee shall allow representatives of the Board and other parties, as may be authorized from time to time by the Board, reasonable access to project works to determine compliance with the terms of this license.

All rights and privileges under this license, including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

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Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: AUG 1 1975
STATE WATER RESOURCES CONTROL BOARD

[Signature]
Chief, Division of Water Rights